IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No.423 of 2005

Date of decision :-08.07.2005

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 08.07.2005 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL Misc. Application No.423 of 2005

Mohan Lal Sharma S/o Pt..Mahant Ram
R/o 46/1 Rajeev Colony, Govind Garh
P.S. Cantt, district Dehradun……Applicant

VERSUS

State of Uttaranchal---------- Respondent

Hon'ble J.C.S. Rawat, J.

Heard Sri Vinod Sharma learned counsel for the applicant and learned A.G.A. for the State and perused the record.

This is a petition u/s 482 Cr.P.C. for setting aside the proceedings of caseno. 816 of 2004 Ramesh Chandra Vs. Mohan Lal pending before Judicial Magistrate, Dehradun.

The complaint was filed before the Chief Judicial Magistrate, Dehradun under section 138 of Negotiable Instrument Act on the allegations that the cheques, which were given by the applicant to the respondent no.2, were dishonoured. Thereafter notice was sent to the respondetnno.2. The complaint was filed on which the learned Magistrate took cognizance and summoned the applicant. The main ground is that respondent no.2-complainant came to the house of the applicant and threatened to the applicant for signature in four post dated cheques and the cheques were taken away by respondent no.2 forcibly. The matter was reported to the S.S.P.Dehradun on 6.5.2004. The learned counsel for the applicant contended that there is no prima facie case against the applicant and there is no

mens rea in the instant case. The facts, which have been narrated, cannot be considered by this court as the High Court under section 482 Cr.P.C. cannot embark upon the evidence which is to be led before the trial court. The applicant may take this plea before the trial court and as a matter of fact this is the defence of the applicant-accused. This court has no jurisdiction to evaluate the evidence, which is to be adjudged, by the trial court. The learned counsel for the applicant has relied upon the case of **State of Haryana Vs.Bhajan Lal 1992 (Suppl) 1 SCC 335** in which it has been held that if the complaint does not indicate the commission of the offence the complaint case can be quashed. In the instant case the complaint discloses the commission of the offence. As such the petition is devoid of merit. However, the applicant is at liberty to raise his defence before the court below.

The petition is dismissed.

(J.C.S. Rawat, J.)

Dated :July 8, 2005